SIKKIM

GOVERNMENT GAZETTE

EXTRAORDINARY
PUBLISHED BY AUTHORITY

Gangtok **Saturday 15 th March, 2008** **No. 87**

HIGH COURT OF SIKKIM
GANGTOK

No. 29/HCS **Dated:12.3.2008**

"NOTIFICATION"

In exercise of the powers conferred by Section 139 (b) of the Code of Civil Procedure,1908 and Section 297 (b) of Code of Criminal Procedure, 1973 the High Court of Sikkim makes the following Rules regarding appointment and control of Oath Commissioners:-

Short title:

[1] These Rules shall be called "The Sikkim Oath Commissioners (Appointment &Control) Rules, 2008".

Commencement:

[2] It shall come into force with effect from the date of its publication in the Official Gazette.

Definitions:

[3] a) "Advocate" means an Advocate enrolled under the Advocates Act, 1961 and practicing in a Court of Law in Sikkim.

b) "High Court" means the High Court of Sikkim.

c) "District and Sessions Judge" means the District and Sessions Judge of a particular Civil and Sessions Division in the State of Sikkim.

d) Registrar General means the Registrar General of the High Court of Sikkim.

e) All other words and expressions used in these Rules, but not defined therein shall have the same meaning assigned to them in the Civil Procedure Code, 1908 and the Code of Criminal Procedure, 1973.

Strength of Oath Commissioners at each place:

[4] The number of Oath Commissioners shall be determined by the High Court from time to time.

Mode of Appointment:

[5] The District and Sessions Judge, shall forward the applications filed by the advocates for appointment as Oath Commissioner to the Registrar General of the High Court along with his recommendations, if any, with the following information relating to the applicant:-

a) Standing at the Bar;
b) Whether lady/Scheduled Caste/ Scheduled Tribe/OBC/ Any other special category/ Physically challenged;
c) Reputation of the applicant with regard to his integrity and honesty;
d) Whether he has acted previously as Oath Commissioner, if so, the period thereof.
e) Whether he indulges in any malpractice like touting etc.
f) General behaviour with the public.
g) The District and Sessions Judge shall scrutinize the applications received from desirous candidates and in case an application is found not to be in order, the same shall be returned to the applicant with the objections in writing and such applicant may file the application afresh, if he so desires within the time specified by the District and Sessions Judge.
h) In case the application(s) are found in order or are so found after removal of objections within the stipulated period, the District and Sessions Judge shall forward the applications to the Registrar General of the High Court atleast 10 days prior to the expiry of the term of the Oath Commissioner alongwith his recommendations, if any.

[6] a) An advocate whose term as Oath Commissioner is due to expire shall inform the High Court one month in advance of the same.
b) The Registrar General shall invite applications atleast 15 days before the expiry of the term of the sitting Oath Commissioner(s) for filling up the vacancy from amongst the Advocates practicing in the Courts in Sikkim in the prescribed form (Appendix-"A").

[7] The Chief Justice in his discretion may appoint such number of persons as Oath Commissioners out of the applicants found eligible as may be required.

[8] Such appointment shall ordinarily be made for a period of two years and preference shall be given to new entrants at the Bar, subject to the fulfilment of requisite qualifications as prescribed in the Rules.

[9] The Oath Commissioner immediately on his appointment shall notify on the Court notice board his residential address and the office where he/she shall be available to the public after seeking permission of the Presiding Officer of that Court.

Formalities to be observed by the Oath Commissioner while attesting

[10] While attesting an affidavit, the Oath Commissioner shall observe the following legal formalities:-

a) The Oath Commissioner shall administer Oath/solemn affirmation to the deponent in the vernacular, if he is not conversant with English. If the deponent knows English, the oath may be administered in English or in the vernacular.

b) Contents of affidavits shall be sworn/ affirmed by the deponent in the presence of the Oath Commissioner.

c) The Oath Commissioner shall, at the time of attestation, read over and explain the contents of the affidavit to the deponent in the vernacular if he does not understand English and he shall certify having read over and explained the contents of the affidavit to the deponent.

d) If the deponent understands English, he shall certify having read over the contents of the affidavit to the deponent, thereafter shall affix his stamp on the prescribed form annexed as Appendix-'B' to these Rules to certify the same.

e) In case the Oath Commissioner does not personally know the deponent, he shall get him identified by a person known to the deponent. The Oath Commissioner shall affix his stamp on the prescribed form annexed as Appendix-'C' to these Rules with regard to identification and get the signature of the identifier at the relevant place.

f) The Oath Commissioner shall thereafter append a certificate to the affidavit attested by him in the prescribed form annexed as Appendix-'D' to these Rules.

g) The Oath Commissioner shall affix his seal indicating his full name in capital letters and then put his signature over the seal on the affidavit,and entry shall be made in the register as required under Rule 10 below. He shall append his signature on every page of the petition supported by such affidavit. The seal shall bear the full name and designation of the Oath Commissioner in capital letters. "Advocate" shall also appear therein alongwith serial number, date and time of attestation.

Fee for attestation of Affidavits

[11] Fees for attesting affidavits and administration of oath or affirmation shall be as under:-

a) Attestation in the Court premises Rs 100/- per affidavit.

b) Attestation in the residence of the deponent, - Rs 200/- per affidavit.

c) A written receipt for the amount of fee received shall be given by the Oath Commissioner to the deponent. The receipt shall be on a printed form annexed as Appendix-E to these Rules of which the counter-foil shall be kept by the Oath Commissioner as proof of payment of fee by the deponent.

Register of Affidavits.

[12] All affidavits attested by an Oath Commissioner shall be entered in a Register to be maintained on the prescribed form annexed as Appendix-F to these Rules.

Periodical inspection of the Registers maintained by Oath Commissioner

[13] a) Inspection of the registers of Oath Commissioners shall be conducted quarterly at the headquarters of the District and Sessions Division by the Chief Judicial Magistrate cum Civil judge of the respective jurisdiction.
A copy of the inspection note shall be sent to the respective District and Sessions Judge (East and North) and (South and West) by the Inspecting Officer by the tenth of the month and the Consolidated statement of the District shall be sent by the District and Sessions Judge to the Registrar General of the High Court by the fifteenth of the month following the month of inspection.

b) Inspection of registers of Oath Commissioners at the High Court shall be conducted quarterly by the Registrar General or his nominee and the report shall be placed before Hon'ble the Chief Justice for perusal and orders.

[14] While inspecting the working of the Oath Commissioners and preparing the report thereof, the Inspecting Officer, must inspect and specifically report of the compliance of the following instructions by the Oath Commissioners.:-

a) Whether the Oath Commissioner is maintaining a register of affidavits on the prescribed form.

b) Whether the columns of the register are filled in properly giving all the requisite details and are signed by the deponent, identifier and the Oath Commissioner.

c) Whether the Oath Commissioner is issuing receipts for the amount of fees received on the prescribed printed form.

d) Whether the Oath Commissioner has attested any such affidavit,which he should not attest.

e) Whether the fee charged by the Oath Commissioner is in accordance with the fee prescribed under these Rules.

f) Whether the Oath Commissioner is indicating the date, time, and number while attesting the affidavits.

g) In case the Oath Commissioner is found consistently committing errors, whether he has been asked not to repeat the same.

Appointment as Oath Commissioner when to be cancelled.

[15] If an Oath Commissioner violates any of the instructions or he is consistently found committing errors, steps for his removal as Oath Commissioner shall be taken by the High Court on the recommendation of the District Judge, of the concerned District & Sessions Division.

Consignment.

[16] When the term of appointment of an Oath Commissioner expires and he is not appointed for any further term, he/she shall deposit the register of affidavits with the Registrar General of the High Court, or the District and Sessions Judge (where he was appointed as Oath Commissioner)

Interpretation.

[17] In case of any doubt as to interpretation of these Rules, or their application, the matter shall be referred to the Chief Justice whose decision in the matter shall be final.

Residuary Powers

[18] Nothing in these Rules shall be deemed to affect the powers of the High Court to make such orders from time to time as it may deem fit in regard to all matters forming part of these Rules and/ or all matters incidental or ancillary thereto not specifically provided for herein above.

BY ORDER

Sd/-
(Meenakshi M.Rai)
REGISTRAR GENERAL

Appendix-'A'

(a) Date of enrolment as an Advocate.

(b) Standing at the Bar.

(c) Monthly income of the applicant:

i) From his profession

ii) From other sources including income of his parents if living jointly:

(d) Whether the applicant has ever been appointed before as, Oath Commissioner,if so, the period and the place:

(e) Whether the applicant is an Lady, SC/ST/OBC/Any other special Category/ Physically Challenged candidate?

Date:

Signature

Appendix'B'

Certified that the affidavit has been read over and explained in vernacular/English to Shri_____ deponent, who seemed to have perfectly understood the same at the time of making thereof.

Oath Commissioner,
Strike out which is not applicable.

Appendix'C'

Deponent is identified by Shri_____ whose signatures are given below.

Signature of the identifier
(with date)

Signature of the Oath
Commissioner (with date)

Appendix-'D'

Certified that the above was declared on oath/solemn affirmation before me at_____ this day of _____200 by Shri/Smt._____ deponent, who is personally known to me identified by Shri._____ who is personally known to me.

Oath Commissioner

Date:

Time:

Appendix-'E'

Counter Foil

No_____

Received Rs_____ from

Shri/Smt_____ R/o_____

Teh._____Distt._____

Deponent on account of attestation of affidavit,

this____ day___ of 200

at_____

Oath Commissioner

Receipt Form

No_____

Received Rs_____ from

Shri/Smt_____ R/o_____

Teh._____Distt._____

Deponent on account of attestation of affidavit,

this___ day___ of 200

at_____

Oath Commissioner